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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re J.G. et al. Persons Coming Under the Juvenile Court Law.	
STANISLAUS COUNTY COMMUNITY SERVICES AGENCY, Plaintiff and Respondent, v. M.G., Defendant and Appellant.	F056932 (Super. Ct. Nos. 510460, 510461) **OPINION**

THE COURT[*]

APPEAL from orders of the Superior Court of Stanislaus County. Nancy B. Williamsen, Commissioner.

Teri A. Kanefield, under appointment by the Court of Appeal, for Defendant and Appellant.

John P. Doering, County Counsel, and Carrie M. Stephens, Deputy County Counsel, for Plaintiff and Respondent.

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* Before Wiseman, A.P.J., Gomes, J., and Dawson, J.

M.G. appeals from orders terminating his parental rights (Welf. & Inst. Code, § 366.26) to his son, J., and daughter, M.[1] He contends the court should have found termination would be detrimental to the children because it would substantially interfere with their relationships with their two, older half-sisters (older sisters). (§ 366.26, subd. (c)(1)(B)(v).) Alternatively, he claims the children would benefit from an ongoing parent/child relationship with him. (§ 366.26, subd. (c)(1)(B)(i).) On review, we affirm.

PROCEDURAL AND FACTUAL HISTORY

In the fall of 2007, six-year-old J. and two-year-old M. lived with their mother and their older sisters. The mother's erratic and dangerous behavior, fueled by an apparent combination of mental health problems and drugs, created a substantial risk of physical harm to the children. Appellant meanwhile was incarcerated in state prison and could not arrange for J. and M.'s care.

Consequently, respondent Stanislaus County Community Services Agency (agency) detained all four children in November 2007 and initiated the underlying dependency proceedings. Since their detention, the children have lived together with foster parents, Mr. and Mrs. A. Appellant has remained incarcerated throughout the case.

In January 2008, the Stanislaus County Superior Court exercised its dependency jurisdiction over the four children (§ 300, subds. (b), (g) & (j)), adjudged them juvenile dependents and removed them from parental custody. The court also ordered reunification services for the mother but not for appellant. It determined services for appellant would be detrimental to the children pursuant to section 361.5, subdivision (e)(1).[2]

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[1] All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

[2] Section 361.5, subdivision (e)(1) authorizes a denial of services to an incarcerated or institutionalized parent based on a detriment finding. According to the version of

Despite the provision of reasonable services, the mother failed to participate in and made no progress towards reunification. Under these circumstances, the court ruled reunification efforts were limited to six months because M. was under the age of three at the time of the children's initial removal and all four children formed a sibling group (§ 366.21, subd. (e)). The court in turn terminated reunification services in June 2008 and set a section 366.26 hearing to select and implement a permanent plan for each child.

"366.26 WIC Report"

In advance of the section 366.26 hearing, the agency prepared a report in which it assessed all four children as adoptable and reported that their caregivers were "completely" committed to adopting them. The agency therefore recommended termination of parental rights.

According to the agency's assessment of the children, none of them had any medical, developmental, educational or behavioral concerns. All of them participated in mental and developmental assessments in February 2008. Appellant's children, J. and M., did not have a need for any treatment. The older sisters, by contrast, were referred to mental health services for reasons not disclosed in the record.

At most, there was a statement in an earlier portion of the record that the caregivers reported the eldest child was parentified, often took care of the younger children and apparently had been M.'s main careprovider. The caregivers were working

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section 361.5, subdivision (e)(1) in effect at the time of the dispositional hearing here, the court was to consider in determining detriment:

> "the age of the child, the degree of parent-child bonding, the length of the sentence, the length and nature of the treatment, the nature of the crime or illness, the degree of detriment to the child if services are not offered and, for children 10 years of age or older, the child's attitude toward the implementation of family reunification services, and any other appropriate factors." (§ 361.5, subd. (e)(1).)

on setting boundaries with the eldest child that allowed her to be a young girl and not a parent.

The older sisters completed the intake process and were assigned a mental health clinician in April 2008. However, because the clinician was male and neither girl felt comfortable with a male counselor, their cases were reassigned. Nevertheless, the foster parents had "struggled with taking [each girl] to counseling." Neither girl felt she needed counseling and the younger one trusted her sister with her problems.

Otherwise, the children had done very well in their placement and were able to maintain their sibling bond. The children had integrated well with the caregivers and their family and there was obvious fondness between all the family members. The caregivers were very attached to all four children and considered them to be a part of their family.

In particular, the older sisters, who were 12 and 10 years old, were very happy in the foster home. However, they remained bonded to their mother and "go back and forth" regarding whether they wanted to be adopted or would prefer guardianship with their caregivers.

The older sisters as well as seven-year-old J. initially appeared open to the possibility of adoption as their mother had not made contact with them in several months. M. was considered too young to express an opinion. However, during the summer of 2008 the mother resumed occasional contact with the children. The three older children thereafter indicated a desire to be with their mother and not be adopted. This appeared to be an unrealistic dream. Nonetheless, the caregivers understood this and although they preferred to adopt all four children, the couple was willing to become guardians to the older sisters if they strongly preferred that and adopt J. and M. The caregivers also did not wish to have a formal, post-adoption contact agreement.

In the meantime, J. and M. had not had any visits with appellant due to his incarcerated status. He kept in contact with the children through regular letters.

Section 366.26 Hearing

Neither parent attended the section 366.26 hearing held in December 2008. At the start of the hearing, county counsel on behalf of the agency announced the agency had amended its recommendation for the older sisters to one of legal guardianship with the caregivers. Counsel explained "S[.] is old enough and C[.] will be turning eleven. They are both now saying that they would rather not be adopted by caregivers." Counsel apparently was alluding to section 366.26, subdivision (c)(1)(B)(ii) which authorizes a finding that termination of parental rights would be detrimental to a child if the child is 12 years of age or older and objects to termination.

In response, the children's attorney reported that J. was "amenable to guardianship" over adoption. However, given that he was only seven years old, he did not have the legal ability to disapprove adoption as a permanent plan. As the court observed, someone that young may not have a full understanding of what the benefits of adoption would be to them.

County counsel also represented there was "one other concern expressed by the children, not by M. herself." The caregivers initially thought about changing M.'s first name and this upset the older children. The children's attorney reported the caregivers had reconsidered the matter because the children were so upset. Mr. A., who, along with his wife and the four children, was present in the courtroom, was permitted to address the court. He explained, "[w]e're going to change the last name. I doubt we would change her first name. She knows herself as M[.]"

The agency's attorney then called the children's social worker as a witness on an issue unrelated to this appeal. During cross-examination, the mother's attorney asked: "Were concerns about the stability of the placement part of [the recommendation that all

of the children be adopted]?" The social worker replied "No." The attorney followed up with: "Do you believe that the placement might fall apart if the foster parents have to continue to have contact with mother, as the children will be in guardianship?" The social worker answered: "No. I have no concerns regarding the stability of placement."

The social worker later testified that although the four children would have different permanent plans they would "absolutely" be able to maintain to their relationship with one another. "No matter what" all four children were going to stay together.

On further cross-examination, appellant's trial counsel elicited from the social worker that appellant had been present on the previous court date. She observed the children who were also present behaved affectionately towards him. All except M. appeared close to him.

J. also testified at the request of the mother's attorney. She inquired about his wishes. He essentially wanted to have contact with or talk to all of his family, including both parents. He would be sad otherwise. Although he answered "no" when asked if he wanted to be a part of the family he was living with forever, he answered "I don't know" in response to why it was reported that he did not want to be adopted.

In closing arguments, appellant's trial counsel urged the court to find termination would be detrimental to J. and M. on the theory that they were part of a strong sibling group and adoption would substantially interfere with their sibling relationship. The mother's attorney joined in this argument and alternatively urged the court to find termination would be detrimental to J. and M. because the mother had a beneficial relationship with them.

The court accepted the fact that the older sisters objected to being adopted. However, because the caregivers were willing to accept legal guardianship of the older sisters and there were signed consents, the court appointed the A.s as the girls' legal

guardians, granted reasonable supervised visitation between the girls and their mother, and dismissed its dependency jurisdiction over them.

As for J. and M., the court found by clear and convincing evidence that they were likely to be adopted and consequently terminated parental rights. It rejected the argument that having different permanent plans for the four children would interfere with their sibling relationship. The court had little concern in light of the caregivers' dedication to all four children and willingness to have the children remain indefinitely with them. The court also found the parents had not maintained regular visitation and contact with J. and M. and the benefit the children would receive from adoption far outweighed the benefit of inconsistent contact and relationship with a parent.

DISCUSSION

Because J. and M. were likely to be adopted, the law required the court to terminate parental rights, unless one of the specifically designated circumstances, set forth in section 366.26, subdivision (c)(1), provided a *compelling* reason for finding that termination of parental rights would be detrimental to the child. (*In re Celine R.* (2003) 31 Cal.4th 45, 53.) Appellant and the mother bore the evidentiary burden of showing termination would be detrimental under one of the exceptions. (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 809.) As discussed above, both parents argued termination would substantially interfere with the children's sibling relationships with their older sisters. (§ 366.26, subd. (c)(1)(B)(v).) The mother also claimed a continued relationship with her would be in the children's best interests. (§ 366.26, subd. (c)(1)(B)(i).)

On appeal, we review the juvenile court's rejection of the parents' detriment claims for abuse of discretion, not substantial evidence as appellant urges. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.) Having completed that review, we conclude the juvenile court did not abuse its discretion in rejecting either detriment claim.

Sibling Relationship

For the so-called sibling relationship exception in section 366.26, subdivision (c)(1)(B)(v) to apply, a court must find:

> "There would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption."

As the California Supreme Court explained in *In re Celine R., supra,* 31 Cal.4th at page 61:

> "[T]he 'sibling relationship exception contains strong language creating a heavy burden for the party opposing adoption. It only applies when the juvenile court determines that there is a "compelling reason" for concluding that the termination of parental rights would be "detrimental" to the child due to "substantial interference" with a sibling relationship.' (*In re Daniel H.* [(2002)] 99 Cal.App.4th [804,] 813, quoting § 366.26, subd. (c)(1).)"

Here, we will assume for sake of argument J. and M. shared a significant sibling relationship with their older sisters. There was no showing made, however, that termination of parental rights would substantially interfere with the sibling relationship. Although appellant contends otherwise, we conclude each of his arguments is meritless.

Appellant criticizes the court's observations about the stability of the children's placement and contends there was no supporting substantial evidence. In so criticizing the court, appellant loses sight that it was his evidentiary burden to prove a substantial interference (*In re Zachary G., supra,* 77 Cal.App.4th 799, 809) and neither he nor the mother introduced any such evidence. He also overlooks the record evidence regarding how well all four children did in their placement and had integrated with the caregivers and their family. In addition, he ignores the evidence that the older sisters were very

happy in the caregivers' home, there was an obvious fondness between all the family members, the caregivers were attached and "completely" committed to all four children, and the caregivers were willing to become the older sisters' guardians out of deference to their wishes. Appellant further neglects to acknowledge the social worker's testimony that she had no concerns regarding the stability of the children's placement based on her experience in the case.

Appellant also contends the stability of a placement is not a proper factor in deciding whether to apply the sibling relationship exception. Not only does appellant fail to cite any supporting authority for his position, he fails to make any persuasive argument. As alluded to above, appellant's argument oversimplifies the state of the evidence. Not only did the children live together in a stable placement, they were very happy and were doing well. Also, the caregivers were attached and "completely" committed to all four children such that the caregivers were willing to defer to the older sisters' wishes and became their legal guardians.

In addition, appellant argues the older sisters' placement in the caregivers' home was not stable and "[p]roblems were already brewing." He cites: the girls' opposition to adoption which he characterizes as vehement; they were "upset" that the caregivers had thought about changing M.'s name; the caregivers "struggled" with taking the older sisters to counseling, and the caregivers did not wish to have a formal, post-adoption contact agreement. In so doing, he draws unreasonable inferences from the record and would essentially have this court reweigh the evidence. On appeal, however, any and all conflicts in the evidence must be resolved in favor of the respondent and all legitimate inferences indulged in to uphold the decision, if possible. As a reviewing court, we may not reweigh or express an independent judgment on the evidence. (*In re Laura F.* (1983) 33 Cal.3d 826, 833.)

Appellant offers nothing more than his rank speculation that there are signs of a breakdown in the relationship between the older sisters and their caregivers who are now their legal guardians and thus somehow a potential interference in the sibling relationship exists. In a slightly different vein, he also forecasts that allowing the older sisters, but not J. and M., to visit with their parents will create imbalance and uncertainty for J. in particular. Such supposition is not what the code calls for in this regard and will not suffice to overturn the court's exercise of discretion. (*In re Celine R., supra*, 31 Cal.4th at p. 61.) There must be a compelling showing that termination would substantially interfere (§ 366.26, subd. (c)(1)(B)(v)), not that it might or could possibly sometime in the future. On this record, there is no error.

The Parent-Child Relationship Exception

The other exception to termination that appellant urges on appeal provides a court may find termination would be detrimental if the parent maintained regular visitation and contact with the child and the child would benefit from continuing their relationship. (§ 366.26, subd. (c)(1)(B)(i).) He claims he should not be penalized because he did not visit his children. Rather, he contends he was entitled to a detriment finding, at least as to J., because he (appellant) kept in contact with the children through regular letters, he attended hearings in the case, when they saw him at one hearing, J. and the older sisters were affectionate towards him, and J. wanted continuing contact with him.[3]

Given that appellant did not raise this exception in the trial court, he was not entitled to relief on this ground. (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1339.) In any event, he fails to establish that the court abused its discretion. First, the law requires that the parent maintain regular visitation as well as contact. (§ 366.26, subd. (c)(1)(B)(i).) Here appellant did not maintain any visitation. Second, the reason there

[3] There is no evidence in the record that the younger child, M., knew who appellant was.

was no visitation was because the court had previously found reunification services, which includes visitation (see § 361.5), would be detrimental to the children. Third, there was no evidence that J. much less M. would benefit from a parent/child relationship with appellant so as to overcome the statutory preference for adoption.

DISPOSITION

The orders terminating parental rights are affirmed.